

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWESTERN DIVISION

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	File No. 4:12-cr-177-1
	)	
Jeffrey Jim Butler,	)	
	)	
Defendant.	)	

TRANSCRIPT OF CHANGE OF PLEA

Taken at  
United States Courthouse  
Bismarck, North Dakota  
April 23, 2013

BEFORE THE HONORABLE DANIEL L. HOVLAND  
-- UNITED STATES DISTRICT COURT JUDGE --

APPEARANCES

MR. DAVID D. HAGLER  
U. S. Attorney's Office  
220 E. Rosser Ave.  
P. O. Box 699  
Bismarck, North Dakota 58502-0699

FOR THE UNITED STATES

- - - - -

MS. HEATHER McCORD MITCHELL  
Assistant Federal Public Defender  
Federal Plaza  
324 North Third Street, Suite 1  
Bismarck, North Dakota 58501

FOR THE DEFENDANT

- - - - -

Certificate of Court Reporter - Page 54

- - - - -

(The above-entitled matter came before the Court, The Honorable Daniel L. Hovland, United States District Court Judge, presiding, commencing at 2:57 p.m., Tuesday, April 23, 2013, in the United States Courthouse, Bismarck, North Dakota; with counsel appearing on behalf of the respective parties as hereinbefore indicated. The following proceedings were had and made of record in open court with the defendant present.)

9 THE COURT: We will open the record in the case  
10 entitled *United States versus Jeffrey Jim Butler*. Here on  
11 behalf of the Government is Assistant U.S. Attorney Dave  
12 Hagler. Representing the defendant is Assistant Federal Public  
13 Defender Heather Mitchell. Mr. Butler, how are you, sir?

15 THE COURT: This is scheduled as a change of plea  
16 hearing as a result of a Plea Agreement filed on April 12,  
17 2013. The charges at issue are kidnapping and a drug  
18 trafficking offense, as set forth in Count 1 and Count 3 of the  
19 Indictment. Mr. Hagler, what are the parties contemplating  
20 here under the terms of the Plea Agreement and the advisory  
21 sentencing guidelines?

1 result in an offense level of 44. After a three-level  
2 reduction, that would take it to 41. Frankly, anything over a  
3 Criminal History Category I at that point, and I believe he is  
4 likely, in my estimation, Your Honor, to be like a III or a IV  
5 category, would be -- result in a 360-month to life range, and  
6 that's really what we're anticipating, Your Honor.

7 THE COURT: And those are your preliminary  
8 calculations as well, Ms. Mitchell?

9 MS. MITCHELL: Yes, Your Honor.

02:59

10 THE COURT: Mr. Butler, I need to ask you some  
11 questions here this afternoon about your desire to plead guilty  
12 to these two crimes. I'm going to have you sworn in first, and  
13 then I'll ask you some questions.

14 THE DEFENDANT: Yes, sir.

15 THE CLERK: Please stand, raise your right hand.

16 JEFFREY JIM BUTLER

17 having been first duly sworn, was examined and testified as  
18 follows:

03:00

19 THE COURT: Mr. Butler, I know a little bit about  
20 what went on in this case, not because I've seen the discovery,  
21 but just because I've taken pleas from, I believe, three other  
22 co-defendants.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I don't know a whole lot about you other  
25 than what they've told me, but maybe you could tell me, first

1 of all, how old you are, where you grew up, and where you went  
2 to school.

3 THE DEFENDANT: Your Honor, I'm 46 years old. I just  
4 turned 46 this last March the 13th. I grew up in -- I was born  
5 in Bowie, Texas; Montague County, Texas. I grew up basically  
6 in Stephenville, Texas; Breckenridge, Texas, wherever my father  
7 at the time chose to be a pipeline oil field welder.

8 THE COURT: Father still living? Mother still  
9 living?

03:01

10 THE DEFENDANT: No, sir.

11 THE COURT: Neither?

12 THE DEFENDANT: Sir?

13 THE COURT: Neither of them?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you have brothers and sisters?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: How many of each?

18 THE DEFENDANT: I have two older brothers and three  
19 older sisters. I'm the youngest of six.

03:01

20 THE COURT: And do your siblings know what trouble  
21 that you're in?

22 THE DEFENDANT: No, sir, I have no contact with them.

23 THE COURT: Why is that?

24 THE DEFENDANT: We were not raised as a tight family.  
25 As a matter of fact, I could never, ever remember my dad ever

1 once telling me, you know, exactly how proud he was of me or  
2 ever telling me that he loved me even until the time he died.  
3 My mom and dad separated when I was eight years old. I had  
4 been run over by a car. I was in a leg cast. My mother  
5 basically told my dad, "I'm taking the older of the brothers  
6 and you're having to deal with him because of his medical  
7 issues." At that time she didn't want nothing to do with it.

8 THE COURT: Did you graduate from high school?

9 THE DEFENDANT: No, sir. I completed the -- I  
10 completed the tenth grade. Started school in Colorado City,  
11 Texas, at Colorado City High. My junior year, was a candidate  
12 to go play football for Texas Tech. University. I watched my  
13 very best friend die on the football field, and I chose to quit  
14 school at that time.

15 THE COURT: He died from what?

16 THE DEFENDANT: He had an aneurism, which is a  
17 weakening in the blood vessel walls to the brain. September,  
18 the -- September 26th of 1983 he got blind-sided, and he got  
19 hit so hard that it cracked the ear -- where the ear hole was  
20 on a Riddell 361 helmet, cracked it two inches causing swelling  
21 on the brain, and he began to convulse right there on the  
22 football field.

23 THE COURT: And how is your physical health today?  
24 You've got a neck brace on.

25 THE DEFENDANT: Yes, sir. Other than the neck injury

1 that I sustained on April the 18th of last year in Williston,  
2 my physical condition is good. The neck injury is -- it's pain  
3 daily, and the doctor in Minot suggested that there should be  
4 surgery to remove the disk in my neck because the C-2 and the  
5 C-3 are smashed together and it's closing around my spinal  
6 cord, which at various times you'll see that certain parts of  
7 my body will twitch, and that's because of the spinal fluid is  
8 not getting through the --

9 THE COURT: So how long have you been wearing a neck  
10 brace?

11 THE DEFENDANT: Since April 18th.

12 THE COURT: 2012?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Other than that, how's your  
15 overall physical health?

16 THE DEFENDANT: Overall physical health is pretty  
17 fair, yes, sir, I would say.

18 THE COURT: And what about your overall mental  
19 health?

20 THE DEFENDANT: My mental health is in very good  
21 stability other than the situation at hand.

22 THE COURT: All right.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you ever been treated for any  
25 psychological, psychiatric or mental disorders?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you ever been treated for drug or  
3 alcohol problems?

4 THE DEFENDANT: I went to a SARP unit, which is  
5 Substance Abuse and Recovery Program in Wichita Falls, Texas,  
6 in 1988-'89, I believe. I completed a 36-day program there.  
7 Ninety days later I failed that program.

8 THE COURT: So where have you been living most of  
9 your adult life?

03:05

10 THE DEFENDANT: Most of my adult life I lived in  
11 Gainesville, Texas; Colorado City, Texas. I lived down in  
12 Corpus Christi, Texas, for nine months, just basically here and  
13 there all over the state of Texas, sir.

14 THE COURT: When did you come to North Dakota?

15 THE DEFENDANT: I come into North Dakota in March of  
16 2012.

17 THE COURT: And why?

03:06

18 THE DEFENDANT: I come up here seeking -- seeking  
19 employment through the oil field, which in Texas I used to work  
20 for Patterson Drilling, which is one of the largest land-based  
21 oil companies there is. I got hurt with them several years  
22 ago. I come up here to either work in the oil field or work  
23 construction, and that's where I got injured, is -- I was in  
24 the midst of actually building my own company in Williston.

25 THE COURT: You were injured in North Dakota?



1 THE DEFENDANT: Yes, sir. I was -- I was injured on  
2 a job right across from the Walmart park -- Walmart shopping  
3 center in Williston, at an apartment complex they were  
4 building.

5 THE COURT: And what type of an injury?

6 THE DEFENDANT: It was the C-2 and the C-3. There  
7 was a roll roofing -- it's called ice and water shield. I  
8 don't know if you know anything about roofing, but it weighs  
9 about 90 pounds. Forklift operator run up to the garage that I  
10 was to be roofing, and there was nobody on the garage to catch  
11 it. Dropped an ice and water shield and pulled out. And I had  
12 just put my belt on while underneath to get onto the ladder,  
13 and it slid 18-foot and hit me in the back of the neck. For  
14 nine-and-a-half hours I couldn't feel anything from the neck,  
15 down.

16 They flew me from Minot -- I mean from Williston to  
17 Minot. The neurosurgeon there said that I had a nine-hour  
18 window point, that if the swelling and the spinal cord didn't  
19 start to dissipate then and I started getting the feeling back  
20 in my fingers and my feet, that they were going to go in and do  
21 an emergency bone graft with the -- with the disk then. Right  
22 about eight-and-a-half hours after the accident I started to  
23 get numbness -- not numbness, but tingling in the bottom of my  
24 feet, and they had me up and two people were walking me in the  
25 hallway. They said that's probably what saved my legs.

1 THE COURT: So is there a pending Workers Comp.  
2 claim?

3 THE DEFENDANT: At that -- up until the time I was  
4 arrested, yes, sir, there was. At the time -- at the time I  
5 was arrested, I was another several -- several weeks later --  
6 by the North Dakota Workmen's Comp. Commission, that once I was  
7 arrested, that that froze that right there.

8 THE COURT: So how long have street drugs been a part  
9 of your life?

03:08

10 THE DEFENDANT: I was introduced to amphetamines when  
11 I was 15 years old by my older sister, who was 30 at the time,  
12 and it's been sporadic use ever since.

13 THE COURT: Did the usage escalate after you got to  
14 North Dakota?

15 THE DEFENDANT: No, sir. When I first got here to  
16 North Dakota, when I first come into this state, I had no prior  
17 knowledge of anybody, you know, to acquire drugs off of at that  
18 time. And my main motivation at that point was to find work up  
19 until the time I got hurt. Then there was -- there was no  
20 money, no -- I was injured and there was basically nowhere to  
21 turn, and I know that's -- that's not a -- that's not  
22 justifying the means of what happened here. It's just that's  
23 how it went.

03:09

24 THE COURT: So before you ever came to North Dakota,  
25 had you ever been involved in selling and trafficking of

1 methamphetamine or any other street drug?

2 THE DEFENDANT: I had been in Texas several -- two  
3 years prior. I had -- I had sold drugs down there, yes, sir.

4 THE COURT: And specifically what?

5 THE DEFENDANT: Amphetamine.

6 THE COURT: Methamphetamine?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So when you came up to North Dakota in  
9 March of 2012, were you using regularly?

03:10

10 THE DEFENDANT: No, sir, not at that time, nope.

11 THE COURT: And when do you best recall that you  
12 started using meth again?

13 THE DEFENDANT: It was probably about a week after I  
14 got out of the hospital in Minot.

15 THE COURT: And that was in about --

16 THE DEFENDANT: At that time I was -- they had given  
17 me percocets and OxyContin, and I'm not real good with, you  
18 know, downers or --

19 THE COURT: But you got out of the hospital  
20 approximately when?

03:10

21 THE DEFENDANT: I went in on April the 18th, and I  
22 was out April the 21st.

23 THE COURT: And then you returned to Minot?

24 THE DEFENDANT: No, I returned --

25 THE COURT: Or Williston.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And in Williston you were living where?

3 THE DEFENDANT: At that time I was living behind the  
4 MMA building. It's the old furniture store there right off of  
5 Highway 2. I can't remember the gentleman's name that owns the  
6 place now, but we were plugged into his electricity behind  
7 the -- behind that MMA building.

8 THE COURT: Living in a camper of sorts?

9 THE DEFENDANT: Yes, sir. It was a Dodge, a '76  
10 Dodge Winnebago camper thing. That was mine and my wife's.  
11 Yes, that's what we had.

12 THE COURT: And your wife was living in Williston  
13 with you?

14 THE DEFENDANT: She was, yes, sir.

15 THE COURT: What's her name?

16 THE DEFENDANT: Maggie Butler.

17 THE COURT: And where's she now?

18 THE DEFENDANT: She's at the Tompkins Rehab. Center,  
19 sir.

20 MS. MITCHELL: In Jamestown.

21 THE DEFENDANT: In Jamestown.

22 THE COURT: So she must have been charged at the  
23 State level with something?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And what was she charged with?

1 THE DEFENDANT: The initial charge was ingestion and  
2 drug paraphernalia, and also she was charged with a felon in  
3 possession of firearm.

4 THE COURT: So she's a convicted felon.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Out of Texas?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And been a meth user as well?

9 THE DEFENDANT: Yes, sir.

03:12

10 THE COURT: And was meth the drug that was involved  
11 in the State charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And how long was her sentence?

14 THE DEFENDANT: I think she received -- I was  
15 notified she received a three-year sentence, suspended by 18.

16 THE COURT: And how old is she?

17 THE DEFENDANT: She's 36, Your Honor.

18 THE COURT: So what's she going to do when she gets  
19 out?

03:12

20 THE DEFENDANT: At this point I have no idea. That's  
21 as honest as I can tell you.

22 THE COURT: Two of you have been together how long?

23 THE DEFENDANT: Eight years.

24 THE COURT: Either of you have children?

25 THE DEFENDANT: I have four children. They're in

1 Texas. They're all grown. And she has two that her mother has  
2 in Lubbock, Texas.

3 THE COURT: So how do you -- when you look back, how  
4 did you get down this path that put you in the -- embroiled in  
5 the federal criminal justice system facing these serious  
6 charges?

7 THE DEFENDANT: Your Honor, the wife and I made a --  
8 when I got hurt, we made a decision to go out to a bar in  
9 Williston and basically look for some dope. And I run across a  
10 guy there that he sold some dope to me, and when me and my wife  
11 done it, it made my wife really, really sick and really --

12 THE COURT: Sold you meth?

13 THE DEFENDANT: Yeah. It was cut. It was cut real  
14 bad and it -- it aggravated me and angered me to the point that  
15 when I found out that the people up here were paying outrageous  
16 dollar amounts for meth, that I figured that, you know, if  
17 they're going to pay that kind of money, they ought to get a  
18 better deal than what they're getting.

19 THE COURT: So what did you consider to be an  
20 outrageous sum for a gram or an ounce or an eightball?

21 THE DEFENDANT: Well, they were charging at that time  
22 \$200 a gram in Williston.

23 THE COURT: And you figured that you could get better  
24 dope and sell it at a lesser cost or even the same price.

25 THE DEFENDANT: Well, one thing was -- one thing that

1 had ticked me off is the guy that was selling the dope at the  
2 time, if you want to say if I had a pure objective, and that  
3 was to shut him out of business so he wasn't selling bad dope  
4 and putting anybody in the hospital anymore. I mean, that  
5 sounds -- that's not justifying. I'm not justifying what I've  
6 done and I'm not looking for an escape goat, or anything, but  
7 at that point in time, that become between me and this other  
8 person, you know.

03:15

9 THE COURT: Was this somebody that you just met in  
10 the bar for the very first time that evening, or you knew him  
11 before?

12 THE DEFENDANT: I had knew of him, but didn't know --  
13 didn't actually know him.

14 THE COURT: But you knew he sold dope.

15 THE DEFENDANT: Yes, sir, I knew he sold dope. And  
16 my wife was not -- not the only person that he had sold cut  
17 dope or freight dope to and had ripped people off, so like I  
18 said, I'm not -- I'm not trying to justify it, but my aim was  
19 to shut him down and make sure he did not make another dollar  
20 in Williston.

03:16

21 THE COURT: So how did you go about doing that?

22 THE DEFENDANT: Ground and pound footwork, talk to  
23 this one, you talk to that one, and then, you know, finally you  
24 meet somebody that you can -- that's got a quantity enough that  
25 you go in and you say, "Hey, look, it's either put up or shut

1 up. I got the money here. We're either dealing or I'm turning  
2 around and walking off."

3 THE COURT: And I'm not going to get into specifics  
4 with you here about who you acquired larger quantities from,  
5 but were your sources of supply in state or out of state or  
6 both?

7 THE DEFENDANT: There was one -- two in state and one  
8 that I know of that come out of state and one that was being  
9 prepared coming out of state.

03:17

10 THE COURT: But primarily three sources of supply,  
11 working on a fourth.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. And would you have been the  
14 primary or the sole person that would have made the contacts  
15 with these sources and then traveled or in some fashion  
16 acquired the quantities of drugs, or --

17 THE DEFENDANT: Yes, sir, that would -- that would  
18 have been me.

03:17

19 THE COURT: And you on occasion traveled out of  
20 state?

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. Somebody brought it to you  
23 in state.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: To Williston.



1 THE DEFENDANT: Yes, sir.

2 THE COURT: And in terms of quantities, give me your  
3 best guesstimate as to quantities per week or per month,  
4 whatever is easiest for you to calculate.

5 THE DEFENDANT: Okay. This -- to be honest with you,  
6 Your Honor, this is where I've had a little difficulty with the  
7 paperwork stuff. We were just getting basically started. I  
8 had just gotten good enough footholds to be able to start  
9 purchasing by the ounce or, you know, by the quarter pound or  
10 by a half pound. The paperwork says anywhere in between 1.5  
11 kilo to 5 kilos. If in between that 90 days -- 90-some-odd day  
12 period, if I sold -- or, well, I didn't -- that's another  
13 thing. If I purchased anywhere from a half a pound to  
14 three-quarters of a pound, that would probably be pushing it.  
15 I mean, I would even say maybe a pound, you know.

16 THE COURT: Total?

17 THE DEFENDANT: Total and in that -- in that  
18 three-month period. I was -- we were just basically getting  
19 started.

20 THE COURT: And the three-month period you're talking  
21 about is what?

22 THE DEFENDANT: From May the 1st, when I moved into  
23 the backyard on 823 Broadway -- West Broadway, until  
24 August 26th, when we were arrested.

25 THE COURT: Of course, I haven't been doing this my

1 whole life, but I've been at it for more than a decade, and  
2 most of the people that I see, 99 percent of them that are  
3 involved in drug trafficking operations, they tend to minimize  
4 the quantities rather than speak candidly and forthright about  
5 the precise quantities. And sometimes they were using and they  
6 just don't have a real good recollection of how much they were  
7 buying and using and selling.

8 THE DEFENDANT: I started -- when I started -- when I  
9 started with my first purchase there in Williston probably the  
10 first week of May, my first purchase was, I purchased two  
11 grams. Okay. I took those two grams and I sold -- the money  
12 for those -- and I doubled the money for that, and that process  
13 began at that time to staircase upward.

14 There was sometimes -- I mean, you have to take a  
15 look -- okay. There was -- there was the four boys, my wife  
16 and myself, and we were all users. And myself at that point in  
17 time, I was using at least a gram by myself a day, and you  
18 could -- you could probably safely average each one of us was  
19 using a gram or more a day, and so that's -- that's 7 grams.  
20 That's a quarter ounce right there. So if I bought a half  
21 ounce, which is 14 grams, 7 of that was going for personal  
22 consumption. And then I would have to take that seven and  
23 duplicate it and duplicate it. It was a slow process. It  
24 was -- it was not something that, you know, you just jump in  
25 and all of a sudden, you know, it's -- it's like the movie,

1 "Scarface." It was not like that. It's -- it was a slow  
2 process. It was a stairstep process.

3 And we had -- we had expenses that we went through.  
4 I mean, everybody smoked cigarettes. That's two packs of  
5 cigarettes a day with seven people. You had to feed them. You  
6 had gas. You know, there were -- it just -- it really blew my  
7 mind when she said 5 kilos, and I'm going, okay. Wait a  
8 minute, you know. Yeah, it kind of -- I said wait --

9 THE COURT: Well, in the --

03:22

10 THE DEFENDANT: Let's get a little more realistic. I  
11 mean, I was -- I was on my way. If you would have been four  
12 months down the road, then, yeah, maybe we would have been  
13 talking that much.

14 THE COURT: Of course, in the Plea Agreement at  
15 Count 3, paragraph 13, you have agreed that there was somewhere  
16 in the range of 1.5 kilos to 5 kilos of meth that were a part  
17 of the conspiracy. That's -- 1.5 kilos at 2.2 pounds per kilo  
18 is -- you can do the math.

03:22

19 THE DEFENDANT: Yeah, that's what -- that's what I  
20 said. That's the only -- only thing about this whole thing  
21 that I'm having a hard time, you know, but other than that, you  
22 know, like the lawyers and everybody said, even if they drop  
23 it, that's not going to change my --

24 MS. MITCHELL: I might be able to shed a little more  
25 light on that. The original Plea Agreement that Mr. Volk sent

1 over had between 5 and 15 kilos, and that was something --  
2 that's why Mr. Butler has taken, I guess, longer to plead,  
3 because Mr. Volk and I were going back and forth working with  
4 the numbers. We agreed to stipulate to the 1.5, and then when  
5 Mr. Hagler took over, we agreed to stipulate to that lower  
6 amount, the between 1.5 and 5. Basically our goal was to get  
7 to a certain guideline calculation, and once that was achieved,  
8 then I think that amount is a happy medium, I guess you could  
9 call it.

03:24

10 THE COURT: Well, that might be, but if Mr. Butler  
11 isn't going to acknowledge that and agree to that here today,  
12 then he's not really agreeing to the quantities that are  
13 associated with Count 3 of the Indictment and the Plea  
14 Agreement.

15 MS. MITCHELL: I think there's also -- in the  
16 discovery there was also sufficient evidence of maybe a larger  
17 quantity by some admissions by some of the parties, so, I mean,  
18 again, I think that amount is a happy medium.

03:25

19 THE DEFENDANT: And like I said, the math -- I'm  
20 going to plead to this because -- the reason is, I'm guilty of  
21 a lot of things in these things, and I'm not trying to weigh  
22 one to out-justify the other. You know, there is a lot that I  
23 am guilty of. There's a lot that I'm -- that I'm not, but this  
24 is sufficient enough, I do believe, for me to move forward in  
25 my life.

1 THE COURT: So when you first started selling gram  
2 quantities, what were you charging?

3 THE DEFENDANT: I picked -- I picked up the gram  
4 quantities at 180 a gram. I sold them for 120 -- I mean 220,  
5 to make 40 -- my bad, to make -- to make \$40, so that way  
6 each -- each time that there was a profitable margin on each  
7 purchase.

8 THE COURT: And were you personally involved in  
9 selling, or was it the other four characters that were doing  
10 most of the selling?

03:26

11 THE DEFENDANT: This -- it was the other four  
12 characters that mostly had -- I purchased it. I supplied them.  
13 They dealt the -- they dealt the dope, brought me the money. I  
14 took the money and reinvested it.

15 THE COURT: In dope.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And in terms of division of  
18 responsibilities, was there somebody that would weigh the dope  
19 and package the dope, somebody that was primarily responsible  
20 for selling, and somebody that was responsible for collecting,  
21 and somebody that may have had other responsibilities? I mean,  
22 was everybody doing a little bit of everything?

03:26

23 THE DEFENDANT: No, sir. There were some -- there  
24 was one that was not -- we give -- I give him several different  
25 chances to be able to prove his worth, and he just was not

1     mentally or capable of --

2                 THE COURT:   Who's that?

3                 THE DEFENDANT:   That was James Odeneal.   He was -- I  
4     mean, he tried several times.   If he sold very much -- you  
5     know, it might have been three grams.   He just did not have the  
6     mental capacity to do that.

7                 THE COURT:   Is that the guy I saw yesterday?

8                 MS. MITCHELL:   No, he was several weeks ago.

9                 MR. HAGLER:   No, that was Mr. Tuntland's client that  
10    he's speaking about, Your Honor.

03:27

11                THE COURT:   All right.   So my next question is, how  
12    does a 46-year-old man, other than being a drug user and these  
13    guys are drug users, get associated with a bunch of guys in  
14    their early twenties?

15                THE DEFENDANT:   I met -- I met Tyler when I was in  
16    the hospital in Minot.   He was in the bed next to me.   His arm  
17    had just gotten injured.   At that time his -- him and his wife  
18    were having marital problems, and a guy that had come seen me  
19    interfered with their marriage.   And a couple of months -- a  
20    couple of weeks later, you know, this guy is in the rain,  
21    dumped off in my front porch -- well, back porch, backyard  
22    because his wife is leaving him for another man, and he had  
23    nothing and nowhere else to go, no confidence in himself  
24    whatsoever.

03:28

25                I met James Odeneal out at the -- oh, I can't

1 remember the name of the -- it's a State park right outside of  
2 Williston. He was trying to fix a car stereo that never got  
3 fixed. I met him and got a ride from him.

4 I met Nick. He was a friend of Thomas that lived  
5 there at the house with Mr. Larry Larson, and he just -- he  
6 showed up one night, and he and I started drinking together.

7 Zac come in -- Zac come in right toward -- just a few  
8 weeks before -- maybe right at a month before the end of all  
9 this, and Zac was -- somebody had taken him and introduced him  
10 to doping and strung him hard. When I -- when I got a hold of  
11 him, the first thing I done to him was I made him go to sleep  
12 and eat for at least three days.

13 THE COURT: So the -- it was Larry Larson that owned  
14 the house --

15 THE DEFENDANT: Yes, sir.

16 THE COURT: -- behind which you had your camper?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And in the -- and there were more than  
19 one camper back there, right?

20 THE DEFENDANT: James Odeneal had his camper. I had  
21 my RV, and there was another pop-up camper, and I had just  
22 purchased another one set off the property.

23 THE COURT: And so in your circle of friends, how  
24 many people are we talking about that lived in these various  
25 campers?

1 THE DEFENDANT: There was -- there was -- there was  
2 Nick. There was James. There was Zac. And there was Tyler.

3 THE COURT: Okay. And then you and your wife.

4 THE DEFENDANT: And me and my wife, yes, sir.

5 THE COURT: Okay. And you handled all the money.

6 THE DEFENDANT: Most -- most of the money when it  
7 come -- when it come to handling the money for the purchase of  
8 the dope, yes, sir. They received -- they received money when  
9 they needed spending money in amounts of 20, 30, 50, 100  
10 dollars from time to time. It was just getting -- it was  
11 getting to the point to where the profit -- the profit margin  
12 was starting to get higher. It was starting to get larger.

13 THE COURT: And when the profit margins were  
14 increasing up close to the time that it all came crashing down,  
15 what kind of revenue were you generating weekly?

16 THE DEFENDANT: From the cost -- from the base cost  
17 that I was spending -- I was spending 28 -- 2,800 an ounce, and  
18 I was turning at 4,000 an ounce, and I was turning an ounce  
19 every two days.

20 THE COURT: So 2,500 bucks every couple days, give or  
21 take a few hundred bucks, or more than that?

22 THE DEFENDANT: It was probably around 2,200, and  
23 then I would give -- in a week -- in a week I was probably --  
24 the profit margin was probably 2,200 for a whole week because  
25 you had -- you had gas expenses, what I consider, you know --



1 THE COURT: But I mean your profit margin on the dope  
2 was 2,200 bucks every two days.

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. So how long did you -- these four  
5 other gentlemen, you knew them for about how long before the  
6 end of August 2012, when it all came to a halt?

7 THE DEFENDANT: Like I said, I met -- I met Tyler in  
8 April, and it was probably a couple weeks after that is when I  
9 met James, and it was about -- when I moved into Larry Larson's  
10 backyard in May is when I met Nick.

03:33

11 THE COURT: And so when somebody owed a drug debt to  
12 your group, who would have primary responsibility to collect  
13 that?

14 THE DEFENDANT: The primary responsibility was mine.  
15 It was mine. I delegated that to -- in between Nick and  
16 another person at this time.

17 THE COURT: Another person that was not a part of  
18 your circle that lived in the campers.

19 THE DEFENDANT: Right.

03:33

20 THE COURT: Somebody from Williston.

21 THE DEFENDANT: Around Williston, yes, sir.

22 THE COURT: Okay.

23 THE DEFENDANT: And to answer your question from  
24 earlier, yes, sir, each person had different levels of tasks to  
25 perform in the operation, yes, sir, as in Tyler, he basically

1 weighed and bagged the dope. Zac and Nick, they were basically  
2 the footmen. They -- they done most of the selling. James, he  
3 done a lot of driving. He drove. If I need him to go to the  
4 store, if I needed parts, if I needed -- you know, he done --  
5 he done a lot of driving because he was -- he was not real  
6 capable of being profitable to the point of gaining a monetary  
7 gain, but he had uses elsewhere. And he would watch the yard,  
8 you know.

9 THE COURT: So not all the pistons firing.

03:35

10 THE DEFENDANT: Not at that time, no.

11 THE COURT: Okay. So tell me about the hellacious  
12 day of August 21, 2012, and how that all evolved.

13 THE DEFENDANT: You mean August 12th?

14 THE COURT: Or August 12th, I guess. It says 21 in  
15 the Plea Agreement, but that must be a mistake.

16 THE DEFENDANT: No, sir, it was August the 12th.

17 MS. MITCHELL: It is the 12th. The Indictment says  
18 the 12th.

03:35

19 THE COURT: But the Plea Agreement, paragraph 6,  
20 Count 1 first refers to August 12th, and the second paragraph  
21 on the top of page 3 says August 21st, so I'll go along with  
22 the 12th.

23 MS. MITCHELL: I actually -- I had it circled and --

24 MR. HAGLER: Those numbers were transposed in that  
25 second spot, Your Honor. It should all reference August 12th.

1 THE COURT: Okay.

2 THE DEFENDANT: Well, the morning of August 12, 2012,  
3 my wife and I -- this is approximately 7 o'clock in the  
4 morning. We exited our camper, and Mr. Robert Osterhout was  
5 sitting toward -- when I come out of my camper, he was to my  
6 left, coming out of Tyler's and Nick's camper. James' camper  
7 sat directly in front. My wife had went to the bathroom inside  
8 the house. I turned around to come back inside. I had  
9 forgotten something or was answering the phone, or something,  
10 and I stepped back out and Robert Osterhout come up to me and  
11 asked me where my wife was, which was an unusual question  
12 because he seen and he heard the conversation that she's going  
13 to the bathroom, and I said, "She's gone to the bathroom."  
14 Well, he took off to go ask her a question.

15 I had hung around the camper for just a second or a  
16 few seconds longer, and I seen my wife coming back, so I went  
17 toward the bathroom because it's just a one-person bathroom in  
18 the house and I said, "Where's Robert?" And she goes, "Well,  
19 he just took off walking down the road." I said, "Really?" I  
20 said, "Well, he owes me a hundred dollars, and I'm supposed to  
21 take him to his house to go get it." She said, "Well, he  
22 wanted a ride to Walmart and said he wanted to be dropped off  
23 at Walmart."

24 THE COURT: Owes you a hundred bucks for dope?

25 THE DEFENDANT: Yes, sir. Well, yes, sir.

1 THE COURT: Okay.

2 THE DEFENDANT: Yeah. I knew right then something --  
3 something didn't click. I walked in and I looked at Tyler.  
4 Tyler was passed out asleep. I woke Tyler up. I said, "Tyler,  
5 hey, where -- where's your stuff at?" He goes, "What? What?  
6 It's in my pocket," and he jumped up and looked and it was  
7 gone. I told Zac then, I said, "Get in the Jeep. We've got to  
8 go find" --

9 THE COURT: "Stuff," you mean meth.

03:38

10 THE DEFENDANT: Dope.

11 THE COURT: Okay.

12 THE DEFENDANT: At that time I grabbed Zac and we  
13 went down to the Kum & Go, and Mr. Osterhout was standing at  
14 the end out by the road where the trash cans were. I pulled up  
15 and I told Zac to go in and get me a cup of coffee because I  
16 hadn't had a cup of coffee for the day yet. And I told  
17 Mr. Osterhout that I needed to speak with -- speak with him  
18 because there was something wrong. At that time he began to  
19 look a little nervous, a little shaky. He was walking back and  
20 forth.

03:38

21 I told him he needed to come back to the house with  
22 us because Tyler had a problem, and he popped off and said, "If  
23 you got a question to ask me, ask me." I said, "Where's the  
24 dope?" He said, "I have it in my pocket." I said, "So you  
25 stole that dope from Tyler." He goes, "No, I protected it so

1 nobody else would get it." I said, "You reached in his pocket  
2 while he was asleep and got that dope." He said, "Yes, I did."  
3 I said, "Hand it back to me. Don't ever come around. Don't  
4 ever call Tyler again at all." At that point in time, Zac and  
5 I left Kum & Go. Approximately --

6 THE COURT: With the dope that --

7 THE DEFENDANT: Yes, sir. Yes, sir. Approximately  
8 two hours, maybe two-and-a-half hours after that I get a call  
9 on my phone, which the only way Robert Osterhout could have  
10 gotten my phone number was to go through Tyler's phone or one  
11 of the boys because my phone number was not to be given out  
12 just to anybody. And I looked, and I didn't recognize the  
13 number, so I answered it, and it was Robert Osterhout, and he  
14 said, "I need \$300 worth of dope." And I said, "You have got  
15 to be kidding me. You had just stole off of us and you're  
16 calling me." I said, "Don't call here again," and hung up on  
17 him.

18 The number rung again and I looked at it, and I  
19 looked and I seen it was the same number, so I hit the ignore  
20 button. A few minutes later I listened to the voice mail. The  
21 voice mail said -- told me -- he said, "Hey, Pop, if you don't  
22 sell me this \$300 worth of dope, I'm going to the police and  
23 telling about the whole situation." And I went and played that  
24 recording for Tyler, Nick, James and Zac, and they said, "What  
25 do you want to do?" I said, "I want to talk to him." I says,

1 "I want to find out what his major malfunction is." I said,  
2 "We've been good to him." I said, "We have given him  
3 cigarettes, given him, you know, free -- free dope. He's in  
4 debt a hundred dollars." I said, "I'll wipe that clean. I  
5 want to talk to him." And they said, "We'll go find him." I  
6 said, "No, he'll show up sooner or later."

03:41 7 Right around 4 o'clock I had just showed back up at  
8 the house or back at the backyard with Zac because I -- I had  
9 left with Zac to go get -- to go get some beer, and we went and  
10 picked up a girlfriend that he had and we went, rode around for  
11 a little bit and come back, and we were in the backyard. I  
12 took the girl that was with Zac into the camper with me and my  
13 wife when we were talking because this lady had some issues of  
14 her estranged boyfriend beating on her. And I told her, I  
15 said, "Well, you don't have to worry about that anymore." I  
16 said, "He won't touch you again."

03:42 17 I get a text on my phone. It's in between 4:00,  
18 4:30, around 5:00, something around in that neighborhood. He's  
19 here. I went out. I did not see -- I did not see Robert at  
20 that time. I did not see what trailer that they had him in. I  
21 talked to Nick and I talked to Tyler. I said, "You all keep  
22 him cool, keep him comfortable, smoke a little weed, let him  
23 drink a little beer until I have a chance to talk to him." I  
24 walked back into the trailer and was trying to entertain my  
25 wife and the girl that was there.

1                   At that time, at 10 o'clock that night I'm -- I've  
2   heard scuffling a couple times in the camper. At 10 o'clock  
3   that night when I walked up and I looked inside the camper and  
4   I seen Mr. Osterhout laying in the -- laying in the camper with  
5   what appeared at that time clear -- clear tape over his mouth,  
6   the left -- let's see, the left eye socket, I believe it was,  
7   seemed to be indented in and his eye seemed to be hanging out.  
8   Half of an ear, I think, was cut and pretty bloody and beaten  
9   really, really bad. I looked and I said, "Oh, my God, we got  
10   to clean this up," and that's when I instructed -- at that time  
11   I instructed James to clean out Mom's car. I said, "Clean out  
12   Mom's car, get the plastic from downstairs, put it in the  
13   trunk."

14                   THE COURT: Mom's car was --

15                   THE DEFENDANT: Was my wife's car.

16                   THE COURT: All right.

17                   THE DEFENDANT: Because when I seen Mr. Osterhout at  
18   that time and I seen him laying there, I did not see any  
19   movement in the chest. He did not move. I thought he was dead  
20   already. I thought that they had done killed that boy, and  
21   that's when everything started pretty much going on the chaotic  
22   side.

23                   THE COURT: And you were high at the time?

24                   THE DEFENDANT: Yes. Yes, sir, I was.

25                   THE COURT: All right.

1 THE DEFENDANT: And all -- all five -- or all four  
2 boys were high too at that time.

3 THE COURT: So everything that was suggested by  
4 anybody all made sense because everybody --

5 THE DEFENDANT: Sir?

6 THE COURT: -- was intoxicated.

7 THE DEFENDANT: I mean, at that -- you know, at that  
8 time, when I said -- because I'm thinking they done killed this  
9 boy and I was -- I mean, I told them I would always help them  
10 and always protect them, and I'm thinking, okay, I can't go  
11 straight up to the police. You know, and I know that's the  
12 wrong way a lot of people look at it, but, I mean, I'm  
13 thinking, oh, God, how do we get out of this? You know, what  
14 has happened here? I never -- I never seen what they actually  
15 done to him inside that camper, but him laying there, I could  
16 smell the burn marks where they had taken a Taser and stuck it  
17 to his flesh and just laid it on him. It was bad. It was real  
18 bad.

19 THE COURT: And how long had that been going on in  
20 the trailer?

21 THE DEFENDANT: I got the text message that he was  
22 there at 4:30, around 4:30 or 5:00. It was at 10 o'clock at  
23 night when I went to the trailer and seen him.

24 THE COURT: You never got back to the trailer at any  
25 time between that time frame?



1 THE DEFENDANT: No, sir. I was -- at that time I was  
2 in -- I was in my camper with Ms. Woodward and my wife.

3 THE COURT: Ms. Woodford?

4 THE DEFENDANT: Woodford, yes. Not Woodford,  
5 Harwood. My bad. Harwood.

6 THE COURT: And who is that?

7 THE DEFENDANT: That was the -- that was the girl  
8 that Zac had been seeing.

9 THE COURT: Okay.

03:46 10 THE DEFENDANT: At that time --

11 THE COURT: So you didn't hear any screaming,  
12 yelling, cursing?

13 THE DEFENDANT: I heard -- I heard -- I never heard  
14 any screaming. I heard scuffling, you know, in between that  
15 time, but never -- I mean, nothing to the point that it might  
16 have been just a little fight.

17 THE COURT: All right.

03:47 18 THE DEFENDANT: At that time I was more worried about

19 leaving -- leaving my wife and the other girl alone for the  
20 fear of what the other girl would say to my wife.

21 THE COURT: What does that mean?

22 THE DEFENDANT: Well, I was afraid that that girl was  
23 going to start saying something about the little ride that her  
24 and Zac and I had taken and was out together with, and that --  
25 that kind of -- yeah, that worried me a little.

1 THE COURT: So what, the three of you were out  
2 fooling around in a car someplace, or what?

3 THE DEFENDANT: Yeah.

4 THE COURT: Okay. So then somebody lined the car  
5 with plastic and dumped the body in the back of the car trunk.

6 THE DEFENDANT: When I seen them pick -- when I seen  
7 them pick Robert Osterhout up and put him in the trunk -- when  
8 they put him in the trunk, I seen no movement from him at all,  
9 none. When the trunk was shut, I told James to stay and watch  
10 the yard. Me, Tyler, Nick, and Zac got in the car to go take  
11 what I appeared as Mr. Osterhout being deceased at that time  
12 off and dump a body, yes, sir.

13 THE COURT: And who would -- who drove?

14 THE DEFENDANT: I did.

15 THE COURT: And you just drove out to the middle of  
16 nowhere, somewhere west of Williston.

17 THE DEFENDANT: Yes, sir, we drove -- at that time it  
18 seemed like it took forever, but it wasn't -- it wasn't that  
19 long. We drove into Montana, passed, I want to say, one, two  
20 little towns out in Montana, and I took a left and went through  
21 some dirt roads. And my intentions was just opening up the  
22 trunk and putting a body on the side of the road. We drove by  
23 a farmhouse, and I went to make a three-point turn, and in the  
24 middle of this three-point turn, the trunk opens up and  
25 Mr. Osterhout takes off running out of the car. At that point

1 in time was the only time that I said, "Get him," because at  
2 that time I really started to freak out. The only time I ever  
3 initiated or said anybody to put for me -- for anybody to put  
4 their hands on him was at that time. I said, "Get him, grab  
5 him."

03:49 6 They chased him into the field. Nick, Zac and Tyler  
7 left the vehicle and chased him into the field. By the time I  
8 got the car facing the direction that we had come from and shut  
9 the lights off and went into the field, by the time I got up on  
10 where Mr. Osterhout was, I seen Nick raring back. This is the  
11 only time I seen anybody physically touch him. I seen Nick  
12 raring back with a -- I appeared with a rock in his hand, and  
13 he was hitting Mr. Osterhout around the facial area. It may  
14 have been his closed fist. It was dark.

03:50 15 I run up there. His feet are kicking. The only time  
16 I heard him say anything, that's when he said help. And I  
17 grabbed a hold of his legs, and he kicked me in the mouth, and  
18 I grabbed a hold of his legs. At that time Tyler was standing  
19 there and was about to take a leak right there, and I told him  
20 to go back to the car. He left and went to the car. When Zac  
21 and Nick got up off of him, they began to stomp Mr. Osterhout  
22 around the -- around the chest and neck area, and I smelled  
23 poop, and he twitched a couple times and I thought he was dead  
24 for the second time, and that's when I said, "Get in the car."

25 THE COURT: All right. And then you headed back to

1 Williston.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And then it was a couple weeks later that  
4 you were arrested?

5 THE DEFENDANT: Yes, sir, right at 13 days.

6 THE COURT: So how does one carry on a normal  
7 day-to-day lifestyle after an incident like that?

8 THE DEFENDANT: It's not easy. It changes a person.

9 What happened to Mr. Osterhout shouldn't have happened. It --  
10 it at one time -- you know, this is after -- after the fact and  
11 I was talking to the boys. One of them -- I'm not going to say  
12 which one at this point unless instructed to -- seemed  
13 overjoyed --

14 THE COURT: Oh, I think I know who that is.

15 THE DEFENDANT: -- about what had happened.

16 THE COURT: Right.

17 THE DEFENDANT: And had went just ape crazy telling  
18 people about it, and I'm thinking --

19 THE COURT: From what I recall, Mr. Woodford seemed  
20 to find some great joy in --

21 THE DEFENDANT: Yes, sir, he did.

22 THE COURT: -- beating the you-know-what out of  
23 people.

24 THE DEFENDANT: Yes, he did.

25 THE COURT: And then ultimately when you were

1 arrested, was that at your camper?

2 THE DEFENDANT: Yes, sir, I had just stepped outside  
3 my camper.

4 THE COURT: And everybody else arrested about the  
5 same time?

6 THE DEFENDANT: At the same time.

7 THE COURT: All in the same --

8 THE DEFENDANT: All except -- all except for Zac.

03:52

9 Zac had -- Zac had done -- either he stole it off of me or he  
10 had done way too much dope. He had zipped off. He took -- he  
11 took Ms. Harwood and went into Montana. He had thought we were  
12 circling him at a convenience store in Montana, when we were  
13 sitting at the backyard, and I'm telling him, "Dude, you are  
14 spun. You just need to come on home," and he was freaking out  
15 that we were all going to try to go kill him. And then he  
16 started -- he went -- when the cops showed up at his aunt's  
17 house, he's the one that started bumping his gums about the --  
18 about what he thought at the -- everybody thought that  
19 Mr. Osterhout was dead at that time, and he --

03:53

20 THE COURT: So in the days following this incident,  
21 there must have been a point in time when all of you sat around  
22 and decided that you were going to come up with a consistent  
23 story if confronted by law enforcement.

24 THE DEFENDANT: I was thinking of that on the way  
25 back.

1 THE COURT: Okay.

2 THE DEFENDANT: And the story was to go, the last  
3 time anybody had seen Mr. Osterhout was on the 12th, around  
4 5:00 or 6:00. He had stopped by Larry's. He was high and just  
5 admitted that he had ripped -- ripped some people off, and he  
6 was run off from the backyard, and that was the last -- and  
7 that was --

8 THE COURT: Kind of half truth. I mean, it's --

03:54

9 THE DEFENDANT: Yeah. I mean, as far as the knife  
10 and the cellphone and the soda bottle being left there in  
11 Montana at the crime scene, until I got arrested, I didn't know  
12 that had happened.

13 THE COURT: So do you feel that you've had sufficient  
14 time to talk to your attorney about this case?

15 THE DEFENDANT: Yes, sir, I have.

16 THE COURT: And you've been given an opportunity at  
17 some point in time to review the discovery and the evidence  
18 that the Government has compiled and turned over?

19 THE DEFENDANT: Yes, sir.

03:55

20 THE COURT: And in terms of the Plea Agreement that  
21 was signed in this case, did you read that over and review it  
22 with your attorney?

23 THE DEFENDANT: Yes, sir, I have.

24 THE COURT: And I want to make it clear that if  
25 you've got any questions about the Plea Agreement, the

1 sentencing guidelines or anything else that goes on here today,  
2 you can ask questions. You're not prohibited from asking  
3 questions.

4           So let me tell you what the penalties are for these  
5 offenses. The kidnapping offense set forth in Count 1 of the  
6 Indictment is a felony. It carries a maximum of up to life in  
7 prison, a maximum fine of \$250,000. You can be placed on  
8 federal supervision for five years. There's a requirement that  
9 you pay a special assessment of \$100. Those are the maximum  
10 penalties.

03:55

11           For Count 3, the drug trafficking offense, it carries  
12 a maximum of up to 20 years in prison, a maximum fine of a  
13 million dollars, placement on federal supervision for three  
14 years, and the payment of a \$100 special assessment. Any  
15 questions about those maximum penalties?

16           THE DEFENDANT: No, sir.

17           THE COURT: And in terms of the kidnapping offense, I  
18 have the discretion to order you to pay what's called  
19 restitution as a part of the sentence, and in a case like this  
20 where somebody was seriously injured, that would be repayment  
21 of medical bills, wage losses, things of that sort sustained by  
22 the victim. I know from other pleas I've taken in this case,  
23 that the Government doesn't have a clear handle on how much  
24 that would be, but I just want you to know that I have the  
25 discretion at the time of sentencing to order each and every

03:56

1 one of you to pay restitution --

2 THE DEFENDANT: Yes, sir.

3 THE COURT: -- in an amount to be determined by  
4 myself if the parties can't agree on it, understood?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Then I also want to make sure that  
7 you understand what your Constitutional rights are, and those  
8 have been outlined in detail in the Plea Agreement. The most  
9 important right that you and any defendant has is a right to a  
10 jury trial. That means that no defendant ever has to plead  
11 guilty. Every defendant has a right to demand a trial.

03:57

12 If you demanded a trial in the case, then the  
13 evidence would be presented in this courtroom to 12 jurors  
14 selected by both attorneys, and the jury in a federal criminal  
15 case has to unanimously agree as to whether a person is guilty  
16 or not guilty. And it is the Government, not you, that has the  
17 burden of proof. The Government has to call witnesses and  
18 present evidence and convince all 12 jurors that you are guilty  
19 of the essential elements of these two crimes.

03:57

20 At a trial you're represented by your attorney, if  
21 you wish. Your attorney would have the opportunity to  
22 cross-examine and question and challenge any of the  
23 Government's evidence. You would have the right to testify at  
24 a trial and the right to present a defense and the right to  
25 have witnesses brought in at government expense to testify for



1 you.

2 But you can opt to go to trial and remain silent.  
3 You have a Constitutional right to remain silent, and that  
4 means that nobody could ever put you on the stand and question  
5 you about what's gone on here. You can go to trial, not say a  
6 word, and the jury is not to hold that against you because I  
7 tell them that just because a defendant goes to trial and  
8 chooses to remain silent, they are not even to discuss that.  
9 They are not to reach any conclusion that somebody is guilty  
10 because they haven't testified. Do you understand that?

03:58

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And when you go to trial, if you were  
13 found guilty by the jury of any of these offenses, you have a  
14 right to appeal that. You can appeal the jury's decision. You  
15 can appeal the sentence that I might order you to serve after a  
16 finding of guilt by a jury. Any questions about that?

17 THE DEFENDANT: No, sir.

18 THE COURT: You also have a right to plead guilty, as  
19 does every defendant. Nationwide in the federal system,  
20 95 percent of criminal cases are resolved by defendants signing  
21 plea agreements and entering pleas of guilty in open court, and  
22 that's largely true in the state system as well. But when you  
23 make that decision to plead guilty here this afternoon, then  
24 you give up some important things in your life. You give up a  
25 right to a jury trial. Do you understand that?

03:59

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And in the Plea Agreement, which I will  
3 talk to you about in a few minutes, you have also agreed to  
4 give up your right to appeal these convictions and the sentence  
5 that I order you to serve as long as I sentence you in  
6 accordance with what the sentencing guidelines indicate is your  
7 sentence range, understood?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you've decided that you wish to plead  
10 guilty to both counts here this afternoon?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Anybody forced you, intimidated you or  
13 threatened you in any manner or fashion to come in here to  
14 plead guilty this afternoon?

15 THE DEFENDANT: No, sir.

16 THE COURT: Is it fair to say that this is a decision  
17 that you have made on your own?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions?

20 THE DEFENDANT: No, sir.

21 THE COURT: Okay. And then in terms of the  
22 sentencing guidelines, I had Mr. Hagler summarize here at the  
23 start of the hearing what the Government thought the sentencing  
24 guideline calculations would be. In the Plea Agreement at  
25 paragraph 13, which you have agreed to, it outlines what the

1 parties agree and expect the guideline calculations will be.

2 And the guidelines are in place in the federal system  
3 for a purpose. They're there to provide some consistency in  
4 how defendants are treated and how they are sentenced  
5 throughout the country. Most states do not have sentencing  
6 guidelines. We've had these sentencing guidelines in the  
7 federal system for more than 20 years. And again, the purpose  
8 is to provide some fairness so that a defendant who's charged  
9 with these two types of crimes and who has a criminal history  
10 that might be similar to yours is generally going to receive  
11 much the same sentence whether they're in North Dakota or Texas  
12 or any place else.

04:01

13 THE DEFENDANT: Yes, sir.

14 THE COURT: When they say that the guidelines are  
15 advisory, that means that I can follow them or I can choose not  
16 to follow them. And the guidelines are only one of many  
17 factors that need to be considered before a judge orders a  
18 sentence, but nationwide I can tell you that the sentencing  
19 guidelines, although advisory, play a very significant role in  
20 the sentences that are handed out by federal judges. The  
21 federal government keeps very detailed statistics about  
22 sentencings in federal court. They know every sentence that  
23 every judge has ever handed down and whether it is in  
24 conformance with the guidelines or not.

04:01

25 There are 80,000 defendants sentenced in federal

1 court every year. Eighty percent of the time defendants  
2 receive a sentence that comports with the sentencing guidelines  
3 or it comports with what the Government may have recommended if  
4 there has been some cooperation and assistance provided by a  
5 defendant. So in other words, 80 percent of the time, no  
6 matter where you are in the country, as a defendant you're  
7 likely to receive a sentence that falls within the guidelines,  
8 understood?

9 THE DEFENDANT: Yes, sir.

04:02

10 THE COURT: Okay. And there's two factors that  
11 impact your sentence. One is the crime. One is your criminal  
12 history. The more serious your criminal history is, the longer  
13 your sentence is. And in terms of the crime, every crime, as  
14 you can see in the Plea Agreement at paragraph 13, has a  
15 certain numerical value, and there may be upward or downward  
16 adjustments to that particular crime; in a case like this,  
17 depending upon the type of injury and whether there were  
18 firearms involved, whether there's violence involved, whether  
19 one is considered to be an organizer or a leader. All of those  
20 are independent factors that might impact the numerical value  
21 associated with a crime. That's all laid out in paragraph 13.

04:03

22 And as Mr. Hagler indicated and as the Plea Agreement  
23 reveals, it is expected that when we look at both of these two  
24 crimes together, you are going to end up, after all the  
25 adjustments are made, with what's called an adjusted offense

1 level of 41. And did you say the defendant has a criminal  
2 history of --

3 MR. HAGLER: I anticipate, Your Honor, it's probably  
4 going to be a IV.

5 THE COURT: Okay. So let's -- at an offense level of  
6 41, then the judge and the attorneys all turn to a sentencing  
7 table within the guidelines, and at a level of 41, whether you  
8 are a Criminal History Category II, III, IV, V or VI, the  
9 sentence range is all the same. It's 360 months; namely,  
10 30 years to life. Is that what you've been told?

04:04

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Now, again, there's other factors  
13 that I need to consider. If there's been cooperation and  
14 assistance provided by a defendant, then what typically happens  
15 is that the Government comes in, they file a motion requesting  
16 that I order a sentence below the guidelines. It's called a  
17 Section 5K1.1 motion. That's the section in the guidelines  
18 that allows for that. And if the Government requests that I go  
19 below the guidelines based upon a defendant's cooperation and  
20 assistance, I generally grant those motions. I don't always go  
21 along with what the Government recommends for a departure  
22 downward. Sometimes in this district they typically come in  
23 and request one-third off of the guideline sentence. Sometimes  
24 it's 50 percent. Sometimes it's 25 percent. Every case is  
25 different.

04:04

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And that varies all over the country.  
3 There's no standardized procedure in any district as to whether  
4 somebody should get 25 percent off, 40 percent off, 50,  
5 75 percent off if they cooperate. It's all over the board  
6 around the country.

7 THE DEFENDANT: Understood.

04:05

8 THE COURT: Whatever the Government recommends, I  
9 don't have to accept. Whatever your attorney thinks would be  
10 fair, I don't have to accept that either. I have some factors  
11 that I need to rely upon in Section 5K1.1, and ultimately I  
12 would have the final say about whether there's going to be a  
13 departure below the guidelines based on one's cooperation, and  
14 if so, how much that's going to be.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Any questions so far?

17 THE DEFENDANT: No, sir.

04:05

18 THE COURT: All right. Then I want to talk to you  
19 briefly about the Plea Agreement. I think we've covered most  
20 of what's in here, but first and foremost, I want to find out  
21 if you're the one that signed that Plea Agreement on April 5th.

22 THE DEFENDANT: Yes, sir, that's me.

23 THE COURT: And you're able to read, and you did read  
24 the Plea Agreement?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. And if you could turn then to  
2 paragraph 24 of the Plea Agreement found on pages 15 and 16, do  
3 you see that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: That paragraph is entitled "Appeal  
6 Waiver." Those words are bolded and they're underlined, and  
7 they're underlined for a reason, because it's an important  
8 paragraph. Appeal waiver in very simple terms means giving up  
9 your right to appeal. This paragraph is designed so that you  
10 give up your rights of appeal and we are not entangled in more  
11 legal challenges to what's gone on here in this case.

12 And the paragraph contains a lot of lawyer -- fancy  
13 lawyer language, legal gibberish, but when you cut through all  
14 that, let me tell you what it means. Appeal waiver in this  
15 paragraph for you means that if we get to the sentencing  
16 hearing, and let's just say the Government doesn't move for a  
17 departure based on some cooperation provided and the guideline  
18 range is 360 months to life -- I'm just using that as an  
19 example. If I sentence you anywhere from 360 months to life,  
20 under those circumstances, in this paragraph you are agreeing  
21 that you are not going to challenge that or appeal that. You  
22 have agreed that you will not challenge these convictions and  
23 that you will not challenge the sentence as long as I sentence  
24 you within the guidelines. That's what it means. When you  
25 wade through and cut through all the legal stuff, that's what

1 it means. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. And the Courts of Appeals around  
4 the country have said it is permissible to put a paragraph like  
5 this into a Plea Agreement, and the Courts of Appeals have  
6 universally said to defendants, "We will enforce this. If you  
7 choose to appeal after you've been sentenced within the  
8 sentencing guidelines that are found to apply to you, we are  
9 going to enforce this against you." And 99.9 percent of the  
10 time when a defendant appeals, it goes nowhere. It gets thrown  
11 out. It gets dismissed because the Courts have said, "You  
12 signed a contract, Mr. Defendant. We're going to hold you to  
13 it," so it's an important paragraph. I want to make sure you  
14 clearly understand what it means for you. Do you have any  
15 questions about paragraph 24?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. And then if you could turn to  
18 paragraph 6 of the Plea Agreement found on pages 2 through 5,  
19 paragraph 6 is a rather detailed summary of the facts in this  
20 case like we've been talking about because before any judge can  
21 accept a plea from a defendant, he or she needs to make sure  
22 that there are sufficient facts that support finding a  
23 defendant guilty of what he intends to plead guilty to.  
24 Paragraph 6 is just designed to lay out what those facts are.  
25 When you signed the Plea Agreement, you essentially



1 acknowledged that you've read it and you agree with it. So my  
2 question to you is, do you agree that the factual information  
3 contained in paragraph 6 of the Plea Agreement is accurate?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Hagler or Ms. Mitchell, anything else  
6 you want to note in terms of a factual basis for this plea?

7 MR. HAGLER: No, Your Honor.

8 MS. MITCHELL: Other than, again, the typo, the  
9 August 21st versus August 12th.

04:09

10 THE COURT: Fully understood.

11 MS. MITCHELL: Nothing else.

12 THE COURT: So, Mr. Butler, we've come to that stage  
13 where I'm simply going to ask you how you plead to Counts 1 and  
14 3. I can read the entire count to you. I can summarize it for  
15 you. If you're comfortable with me summarizing, I'd be happy  
16 to do that, but if you want me to read it all to you, I'll read  
17 it to you.

18 THE DEFENDANT: It's getting late, Your Honor. Let's  
19 all go home.

04:10

20 THE COURT: Summarization is fine with you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Count 1 as set forth in the  
23 Indictment is entitled kidnapping. We've been talking about  
24 that count at some length. With respect to Count 1, the  
25 kidnapping charge, sir, how do you wish to plead, guilty or not

1   guilty?

2                   THE DEFENDANT:   Guilty.

3                   THE COURT:   Count 3 is entitled conspiracy to  
4   distribute and possess with intent to distribute  
5   methamphetamine.   How do you wish to plead to Count 3, sir,  
6   guilty or not guilty?

7                   THE DEFENDANT:   Guilty.

8                   THE COURT:   The Court accepts your plea of guilty to  
9   Counts 1 and 3, Mr. Butler.   I find that you are a competent,  
10   intelligent man who understands what you've been charged with  
11   and what the penalties are under federal law.   I find that you  
12   have entered a knowing and voluntary plea of guilty here this  
13   afternoon.   I also find that there are sufficient facts that  
14   you have agreed to that would support finding you guilty of  
15   each of these crimes as required under Rule 11 of the Federal  
16   Rules of Criminal Procedure, so I accept your pleas of guilty.

17                   What will happen next in this process -- it's the  
18   same in every case -- is that I'm ordering the U.S. Probation  
19   Office to prepare a presentence investigation report.   I've  
20   been told by Ms. Helderop that she's going to undertake that  
21   task and that she's already interviewed you.

22                   THE DEFENDANT:   Yes, sir.

23                   THE COURT:   And there may be others that she'll  
24   interview.   I think she's probably doing the presentence  
25   reports on all of this -- all of the defendants.   And she'll

1 type up a report that's a very detailed summary about you and  
2 what went on in this case and what your criminal history  
3 consists of and what the sentencing guidelines say, and all of  
4 that goes into this comprehensive report. It is primarily used  
5 for sentencing purposes.

6 It will take probably at least two months to complete  
7 that task. When she completes the report, it's sent out to  
8 both attorneys in a draft form. I never see it then. We give  
9 everybody a chance to look it over and comment on its accuracy.

04:12

10 Ms. Mitchell will get it immediately into your hands when it  
11 comes out in draft form. I'm requesting that you read it and  
12 you read it thoroughly. And when you're reading it, if there's  
13 anything that you believe is not accurate, it's very important  
14 that you let her know that so she can contact the probation  
15 officer.

16 THE DEFENDANT: Yes, sir.

04:12

17 THE COURT: When you're reading it, if you have any  
18 difficulty reading, if there's anything you don't understand,  
19 if it's too much legal garbage, call her up. She can explain  
20 what it all means for you. She looks at these reports every  
21 day. She can tell you what it means for you. And when you get  
22 to reading about the sentencing guidelines, you may have  
23 questions about that. That's not so easy to understand for  
24 anybody, so ask questions. If you don't ask questions, then  
25 everybody concludes that you agree with what's in there.

1 THE DEFENDANT: Exactly.

2 THE COURT: So you need to know what's in there.  
3 It's important that you know what's in there and ask questions.  
4 Don't for a fleeting moment think that you're wasting her time  
5 by asking a question. Don't think that it's going to make you  
6 look stupid or you're ignorant for asking a particular  
7 question. No, there's no such thing. If you've got a  
8 question, it needs to be asked no matter what it is, and you'll  
9 get an answer to it.

04:13

10 Ultimately the report is finalized. It's sent out  
11 again to everybody, including yourself. I get those reports a  
12 couple weeks before the sentencing hearing. I read them all  
13 many times before I get to the sentencing date. Sentencing has  
14 been scheduled now for Friday, July 19th, at 2:15 p.m. in  
15 Bismarck. That may change depending upon everybody's schedule  
16 and what's going on with you and the Government and everybody  
17 else, so -- but every time -- every day you're in custody,  
18 you're getting credit for that. You'll remain in custody until  
19 the sentencing hearing, and that's kind of the chronology of  
20 things over the next few months here. Questions?

04:13

21 MS. MITCHELL: He was just asking -- he wants to go  
22 back to Devils Lake because he has a job in Devils Lake and is  
23 making decent money, but I know John has already told him that  
24 that's the plan.

25 THE COURT: That's the plan.

1 THE DEFENDANT: Okay.

2 THE COURT: It's all up to the U.S. marshals. It's  
3 not up to me. Any other questions, concerns?

4 THE DEFENDANT: No, sir, I sure don't.

5 THE COURT: All right. Ms. Mitchell or Mr. Hagler,  
6 anything else?

7 MR. HAGLER: No, Your Honor.

8 MS. MITCHELL: No, Your Honor.

9 THE COURT: Thank you. We are adjourned.

10 (Concluded at 4:14 p.m., the same day.)

11 - - - - -

12

13

14

15

16

17

18

19

20

21

22

23

24

25

04:14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF COURT REPORTER

I, Sandra E. Ehrmantraut, a Certified Real time Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated this 15th day of July, 2013.

/s/ Sandra E. Ehrmantraut  
Certified Real time Reporter